

APPEAL NO. 022482
FILED NOVEMBER 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 4, 2002. The hearing officer determined that the respondent (claimant) had disability from July 30, 2001, through the date of the CCH.

The appellant (carrier) appeals, attacking the hearing officer's weighing of the evidence and asserting that the hearing officer's decision is not supported by the evidence. The claimant responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. It is undisputed that the injury was not reported to the carrier at the time and that the employer continued to pay the claimant's full wages and medical bills while the claimant worked at light duty. The claimant testified that the employer instructed him not to report a workers' compensation injury and the employer's vice president/part owner testified that it was the claimant that did not want the claim reported because he thought he would get less pay. In any event, the situation continued until July 2001 when the claimant apparently became dissatisfied with the medical treatment he had been getting from the employer-provided doctor. The sequence of exactly what happened on a date late in July 2001 is somewhat unclear, however at some point the claimant went to the Texas Workers' Compensation Commission (Commission) field office and either reported his injury or asked how he could change doctors, the claimant either hired or considered hiring an attorney and the claimant went to the employer's premises to advise them about going to the Commission. The claimant met with the vice president/part owner and a superintendent who acted as a translator. The claimant was accompanied by his son. What was said in the meeting is totally disputed by the four people present. The claimant was either fired, or understood that he was not to come back to the premises. The employer's witnesses testified that the claimant left and never returned and therefore had voluntarily quit his light-duty job. The medical evidence, including medical evidence from the claimant's original and subsequent treating doctors supports the fact that the claimant was unable to obtain and retain more than light duty. The claimant subsequently had surgery on March 8, 2002. The parties stipulated that the claimant had disability from March 8, 2002, to the date of the CCH. At issue is the claimant's status from July 30, 2001 (the claimant had apparently been paid to that date), to March 8, 2002.

The hearing officer commented:

The claimant conceded that he had agreed not to report the original injury incident as a workers' compensation case, and had allowed the employer to continue paying him and to send him to their chosen doctor at their own expense. However, he stated that this scheme was the employer's idea, not his, that he became dissatisfied with the "company doctor's" care, and late in July 2002 went personally to a Commission office, reported the injury and requested a change of doctor. He maintained that upon returning to his job and informing [Mr. D] (the employer representative, one of the owners of the company) of his actions, [Mr. D] became angry and fired him. The claimant was a credible witness, and his version of events was more logically and internally consistent than that put forth by [Dr. D] and by the superintendent Mr. N, neither who was a very compelling witness.

The carrier, in closing argument stated that this is a "case of credibility." We agree. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a), as the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb that determination on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge